

**REMARKS**

The Amendment, filed in response to the Office Action mailed July 18, 2008, is believed to fully address all issues raised in the Action. A favorable reconsideration of the action is respectfully requested.

Upon entry of the amendment, which is respectfully requested, claims 1 and 4-9 are all the claims pending in the application. Claim 9 is withdrawn from consideration as being directed to non-elected invention. Claim 1 is amended to incorporate the features of claims 2-3, and claims 2-3 are canceled accordingly. Claim 4 is amended to correct typographical error and more clearly set forth the claimed subject matter. Claim 8 is amended to correct dependency according to the cancellation of claims 2-3. No new matter is introduced and entry of the amendment is respectfully requested.

Applicants thank the Examiner for accepting the drawings filed September 8, 2006.

Applicants further thanks the Examiner for acknowledging the claim for foreign priority and receipts of the copies of the certified copies of the priority documents from the International Bureau.

Applicants extend their appreciation that an initialed copy of the SB/08 forms filed September 8, 2006 and December 19, 2006 have been returned, indicating the references listed in the SB/08 forms are considered by the Examiner.

**Substitution Specification**

The specification is amended in order to improve wordings. For the convenience of the Office, a substitute specification is submitted.

In this regards, Applicants respectfully submit that, from the reading of the full specification, it is clear that the composition has an appearance and texture of curd-type yoghurt, but does not necessarily contain a yoghurt, even though the composition may contain a yoghurt as an optional ingredient. In order to clarify this in the claims, claim 1 is amended to delete the recitation “with curd yoghurt formulation” and to recite that the composition has a lumpy texture and has a viscosity of a curd yoghurt.

Such amendments are supported by the disclosure at page 3, lines 10-11, page 3, lines 17-23, Table 3 of the specification and will point it out in a Response.

#### **Response to Claim Objections**

In the Office Action, claims 2-4 are objected to on the grounds that the “~” is not a proper notation.

In response, the claim is amended to replace “~” with “-“ or “to,” rendering the objection moot.

#### **Response to Claim Rejections - 35 U.S.C. § 112**

In the Office Action, claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite, because it states that the composition further contains starch but then states that it can be present at 0 (zero) amount.

In response, claim 4 is amended to clarify the subject matter and correct the obvious typographic errors.

#### **Response to Claim Rejections - 35 U.S.C. §§ 102 & 103**

In the Office Action, claims 1, 5, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourriot et al. (FR 2811997 A1; “Bourriot”). Bourriot is relied upon to teach a

composition for cosmetic formulation with pectin (a vegetable extract), xanthan gum, mannan at 10-50 wt% with yogurt (Abstract).

In the Action, claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Giddey et al.* (US 5053219: “Giddey”) and *Clarke et al.* (US 6350594 B1: “Clarke”). *Giddey* is relied upon to teach a cosmetic composition containing yogurt in powder form (column 2, lines 21-22). The Office admits that *Giddey* does not teach xanthan gum and mannan and their concentrations. *Clarke* is relied upon to teach cultured plant cell gums, xanthan gum (column 4, line 23) and mannan (column 6, line 29) are used in cosmetic products (Abstract).

In the Action, claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Giddey* and *Clarke* as applied to claims 1-5 above, and further in view of *Breazu et al.* (RO 80928 A: “Breazu”). *Giddey* and *Clarke* are briefly discussed above and *Breazu* is relied upon to teach a cosmetic film-forming mask with strawberry juice (Abstract) and the Office argues that a mask is intrinsically in a pack.

Applicants note that the Office correctly notes that the references do not specifically teach combining all the ingredients together. However, the Office asserts that the references do teach that the ingredients are used in cosmetic formulations, and thus, it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose and the idea of combining them flows logically from their having been individually taught in the prior art. The Office concludes that it would be obvious to combine all the ingredients together because they are taught in the reference to have the same purpose.

Regarding the specific amounts of the ingredients recited in the claims of the instant application, the Office admits that the references do not specifically teach adding the ingredients

in the amounts recited in the claims. However, the Office take a position that the amount of a specific ingredient in a composition that is used for a particular purpose (the composition itself or that particular ingredient) is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Thus, Office concludes that absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

Applicants respectfully traverse.

First of all, none of the references, alone or in combination, teaches all elements of the currently presented claim 1.

Also, as the specification provides, the claimed subject matter shows unexpected effects attributed to the combination of the xanthan gum and mannan over other combinations of polymers that were used in the conventional cosmetic compositions. See Table 1 of the specification.

Alternatively or in addition, if possible, any technical comments as to why one skilled in the art would not have been motivated to use xanthan gum and mannan together in a cosmetic composition will be very useful to overcome the rejections.

Therefore, it is believed that the rejection is not sustainable and its withdrawal is respectfully requested.

### **CONCLUSION**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Sunhee Lee/

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

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Sunhee Lee  
Registration No. 53,892

WASHINGTON OFFICE

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CUSTOMER NUMBER

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